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this Memorandum Decision shall not be  
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establishing the defense of res judicata,  
collateral estoppel, or the law of the case.

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**IN THE  
COURT OF APPEALS OF INDIANA**

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CHARLES BROWN,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A04-0606-CR-299

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Patricia Gifford, Judge  
Cause No. 49G04-0505-FD-74020 & 49G04-0508-CM-136843

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**January 12, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Defendant Charles Brown (“Brown”) appeals the revocation of his probation. We affirm.

## **Issues**

Brown presents two issues for review:

- I. Whether the probation revocation was improper because the evidence included judicially noticed materials; and
- II. Whether the trial court imposed a sentence of unknown duration.

## **Facts and Procedural History**

On September 8, 2005, in cause number 49G04-0508-CM-136843, Brown pleaded guilty to Domestic Battery, a Class D felony (“cause number 843”). He was sentenced to one year of incarceration, with all but eight days suspended to probation. On October 18, 2005, in cause number 49G04-0505-FD-074020 (“cause number 020”), Brown pleaded guilty to Possession of Marijuana, a Class D felony. He was sentenced to eighteen months of incarceration, with fifteen months suspended and one year suspended to probation.

On November 28, 2005, the State filed a Notice of Probation Violation in cause number 843. On December 5, 2005, the State filed a Notice of Probation Violation in cause number 020. The State alleged that, on November 18, 2005, Brown was arrested and charged with Battery, Criminal Confinement, and Domestic Battery under cause number 49G04-0511-CF-199641. At a probation revocation hearing conducted on May 5, 2006, the trial court found that Brown had violated the terms of his probation and ordered him to serve the

portion of his sentences previously suspended to probation. The sentences were to be served consecutively. Brown now appeals.

## **Discussion and Decision**

### **I. Judicially Noticed Materials**

Brown contends that the revocation order must be reversed because it rests, “either in whole or in part, upon the information contained in another case involving [Brown] . . . an entirely separate cause number.”<sup>1</sup> Appellant’s Br. at 5-6. In essence, Brown challenges the sufficiency of the evidence supporting the revocation of his probation.

Placement on probation is a conditional liberty and not a right. Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999), reh’g denied. A probation revocation hearing is in the nature of a civil proceeding and, therefore, the violation need only be proven by a preponderance of the evidence. Smith v. State, 727 N.E.2d 763, 765 (Ind. Ct. App. 2000).

Indiana Code Section 35-38-2-3(g) provides as follows:

If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:

- (1) continue the person on probation, with or without modifying or enlarging the conditions;
- (2) extend the person’s probationary period for not more than one (1) year beyond the original probationary period; or
- (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

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<sup>1</sup> Although Brown does not describe the “other case” with great specificity, it appears from the record that he may be referring to the trial court’s taking of judicial notice of “the file of 05209162” (described by the prosecutor as a case in which Brown was “convicted of obstruction of justice in this court.”) (Tr. 80-81.)

We review the trial court's revocation of probation and sentencing decision for an abuse of discretion. Sanders v. State, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), trans. denied. An abuse of discretion occurs if the decision is against the logic and effect of the facts and circumstances before the court. Rosa v. State, 832 N.E.2d 1119, 1121 (Ind. Ct. App. 2005). If the trial court finds the person violated a condition of probation, it may order execution of any part of the sentence that was suspended at the time of initial sentencing. Stephens v. State, 818 N.E.2d 936, 942 (Ind. 2004). Proof of a single violation of the conditions of probation is sufficient to support a decision to revoke probation. Bussberg v. State, 827 N.E.2d 37, 44 (Ind. Ct. App. 2005), trans. denied.

Where the State has alleged criminal conduct as a probation violation, revocation requires proof that the defendant engaged in the alleged criminal conduct or proof of the conviction thereof. Pitman v. State, 749 N.E.2d 557, 559 (Ind. Ct. App. 2001), trans. denied.

Here, the State presented the testimony of Indianapolis Police Officer Scott Hunt ("Officer Hunt"). Officer Hunt testified that, on November 18, 2005, he was dispatched to a hospital to investigate a report of domestic violence. Darnika Edwards, Brown's live-in girlfriend and the mother of his infant child, reported to Officer Hunt that Brown struck her, pushed and shoved her, choked her into unconsciousness, revived her by slapping her, and choked her again. Accordingly, the State presented proof by a preponderance of the evidence that Brown engaged in criminal conduct while on probation. As the State need only prove a single violation to support probation revocation, the trial court's taking judicial notice of a

separate conviction was superfluous, and not harmful to Brown. The trial court properly revoked Brown's probation.

## II. Sentence

Brown complains that the trial court improperly imposed upon him consecutive sentences of unknown duration. The trial court's sentencing statement made at the probation revocation hearing does not specify the number of days of the previously suspended sentences to be executed. However, the Abstracts of Judgment clarify that the time to be executed was 357 days in cause number 843 and 455 days in cause number 020. Brown has not established the necessity for remanding the matter for sentencing clarification.

Moreover, to the extent that he now argues that consecutive sentences are improper, Brown is attempting to lodge an impermissible collateral attack upon his original sentences. See Stephens v. State, 818 N.E.2d 936, 939 (Ind. 2004).

## **Conclusion**

Brown has not demonstrated that the revocation of his probation was improper, or that he was improperly sentenced.

Affirmed.

VAIDIK, J., and BARNES, J., concur.